

EXHIBIT B-33

Exhibit B-33

Invalidity Contentions: U.S. Patent No. 10,534,382

W.D. Tex., Case Nos. 6:20-cv-00075-ADA, 6:20-cv-00078, 6:20-cv-00080¹

REPRESENTATIVE CLAIM LIMITATION: “wherein the interface is configured to allow the user to input that the building is currently occupied”

ASSERTED CLAIMS: This limitation is present in the following Asserted Claims: ’382 patent claim 16.

CLOSURE: To the extent Plaintiff alleges that any anticipatory reference identified in Exhibit A does not disclose any portion of the above limitation, the following exemplary pincites show that those allegedly missing portions would have been obvious to one of ordinary skill in the art at the time the alleged invention was made in light of the prior art references identified in the table below. Moreover, it would have been obvious to combine any anticipatory reference identified in Exhibit A with any one or more of the following references for at least the reasons explained in the prior document of Defendants’ Invalidity Contentions or as identified herein. All emphasis added unless otherwise indicated.

Reference	Disclosure*
U.S. Patent No. 2004/0117330 (Ehlers”))	<p><i>Ehlers discloses “wherein the interface is configured to allow the user to input that the building is currently unoccupied.”</i></p> <p>“In another aspect of the present invention, the system 3.08 allows one or more occupancy modes to be defined and/or modified and/or utilized by the user. The use of different occupancy modes would assist in achieving a reduced level of demand on the energy delivery system as well as reduce the total cost of operation site 1.04. In one embodiment, the occupancy modes may be defined or modified through the user interface 1.14 (see below) and activated through the thermostat 1.30D and/or the user interface 1.14. Examples of possible occupancy modes include: home, away, weekend, weekday, holiday. Specific modes may also be defined for different users.”</p> <p>Ehlers at [0244].</p>

¹ These contentions are being served by defendants in the following actions: *EcoFactor, Inc. v. Google LLC*, No. 6:20-cv-00075-ADA; *EcoFactor, Inc. v. Ecobee, Inc.*, No. 6:20-cv-00078-ADA; and *EcoFactor, Inc. v. Vivint, Inc.*, No. 6:20-cv-00080-ADA.

To the extent that these Invalidity Contentions rely on or otherwise embody particular constructions of terms or phrase in the Asserted Claims, Defendants are not proposing any such contentions as to the proper constructions of those terms or phrases. Various positions put forth in this document are predicated on Plaintiff’s incorrectly and overly broad interpretation of the claims as evidenced by its Invalidity Contentions provided to Defendants. Those positions are not intended to and do not necessarily reflect Defendants’ interpretation of the true and proper scope of Plaintiff’s claims, and Defendants reserve the right to adopt claim construction positions that differ from or even conflict with various positions put forth in this document.

Reference	Disclosure*
	<p>“With references to FIGS. 4A through 4R, the user interface 1.14 may be implemented as a web page or graphical user interface (“GUI”) 4.02. The GUI 4.02 may be accessible from remote locations, as discussed above. In one embodiment, the customer may access the GUI 4.02 through a web browser or other display device like a television. In another embodiment, the customer may access the GUI 4.02 through a remote device, such as a mobile phone and/or personal digital assistant. By entering a user I.D. and password, the customer may access his or her account.”</p> <p>Ehlers at [0311].</p> <p>“With reference to FIG. 4B, when the customer selects the direct access icon 4.14Aa, a plurality of direct access icons 4.16 will be displayed in the control panel 4.10. In the illustrated embodiment, the customer has direct access of the HVAC system and the whole house meter. Correspondingly, a heating/AC icon 4.16 a and a whole house meter 4.16B are displayed within the control panel 4.10. In another embodiment, all devices 1.08 to which the customer may have access are accessible here, e.g., a second thermostat or the water heater. With reference to FIG. 4C, selection of the heating/AC icon 4.16A, displays a virtual thermostat 4.18 within the control panel 4.10. The virtual thermostat 4.18 contains an information section or display 4.20 and a plurality of thermostat buttons 4.22. The display section 4.20 includes information related to the actual or real time conditions at the site 1.04. In the illustrated embodiment as shown, the current temperature within the customer site 1.04 is 67° Fahrenheit. The heating and cooling set points are set to 58° and 85°, respectively. The system 3.08 is in an automatic mode and the heating and cooling systems are in an off condition. Furthermore, as indicated, the occupancy mode is set to “Away”. As discussed below, the system 3.08 allows the customer to program the HVAC systems use the virtual thermostat 4.18 and according to occupancy modes using heating and cooling set points. By using the thermostat buttons 4.22, the customer can change the current operating parameters of the thermostat. For example, selection of a change system mode thermostat button 4.22A allows the customer to select between automatic and a manual modes. Selection of a change fan mode button 4.22B allows the customer to change the fan mode from “on” to “automatic”. Furthermore, selection of an override temperature button 4.22C or an override occupancy button 4.22D allow the customer to override the current temperature and occupancy schedules as defined below. Selection of a cancel override button 4.22E allows the customer to cancel a temperature or occupancy change which was input using the override temperature button 4.22C or the override occupancy button 4.22D. A cancel curtailment button 4.22F allows a customer to cancel any curtailment program (where permissible).”</p> <p>Ehlers at [0316].</p>

Reference	Disclosure*
<p>U.S. Patent No. 8,196,185 (Geadelmann")</p>	<p><i>Geadelmann discloses "wherein the interface is configured to allow the user to input that the building is currently unoccupied."</i></p> <p><i>See, e.g., 11:61-12:3.</i> In FIG. 3D, it can be seen that web page 338 includes a pane 340 that includes information regarding setpoint and fan information for thermostat 316 (T7350). In particular, pane 340 displays cooling and heating temperature set points for one or more time periods such as occupied, unoccupied and standby. For example, pane 340 includes an up arrow 342 and a down arrow 344 that may be used to alter the cooling set point temperature during the occupied time period. Pane 340 includes a pull-down menu 346 that may be used to alter a schedule override duration.</p> <p><i>See, e.g., 12:4-43.</i> Pane 340 also includes settings pertaining to a fan Switch and a system switch. In particular, pane 340 includes a pull down menu 348 that may be used to alter a setting such as Auto, cool, heat and the like for the system switch as well as a pull-down menu 350 that may be used to set the fan switch to either On or Auto. A Save button 352 permits a user to save any changes that they have made to the parameters displayed within web page 352. In some instances, the Save button 352 may be omitted, and web server 38 (FIG. 2) may ask a user if changes should be saved if any parameter values or settings were altered and if the user attempts to exit a particular web page by, for example, selecting another tab within navigation bar 58. Alternatively, the changes may automatically be saved.</p> <p>Returning briefly to FIG. 3B, if a user clicks on override button 326, web server 38 (FIG. 2) may provide web page 354, as seen in FIG. 3E. Web page 354 may be simpler in appearance than web page 54 (FIG. 3B) and may in some instances be a pop-up page that floats atop web page 54. Web page 354 includes a pull-down menu 356, which permits a user to determine how to override the current status of a particular thermostat. For example, if the current status is occupied, a user may override the current status by changing it to unoccupied. A length of the override period may be set using pull-down menu 358, which may be used to set a number of days and/or pull-down menu 360, which may be used to set a number of hours.</p> <p>Once an override time period has been established, a user may wish to specify which thermostat thermostats to apply the override condition. In some cases, web page 354 may include a checkbox 362 that provides a quick and simple way to select all of the thermostats that are available to the user. Alternatively, web page 354 may provide a pane 364 that includes a list of all available thermostats and permits the user to check off the thermostats that are to be included. As illustrated, it can be seen that there is a check mark in the check box adjacent the thermostat labeled as T7350 (thermostat 316). A user may then elect to initiate the override by clicking on an OK button 366 or may cancel the impending override by clicking on a Cancel button 368.</p>

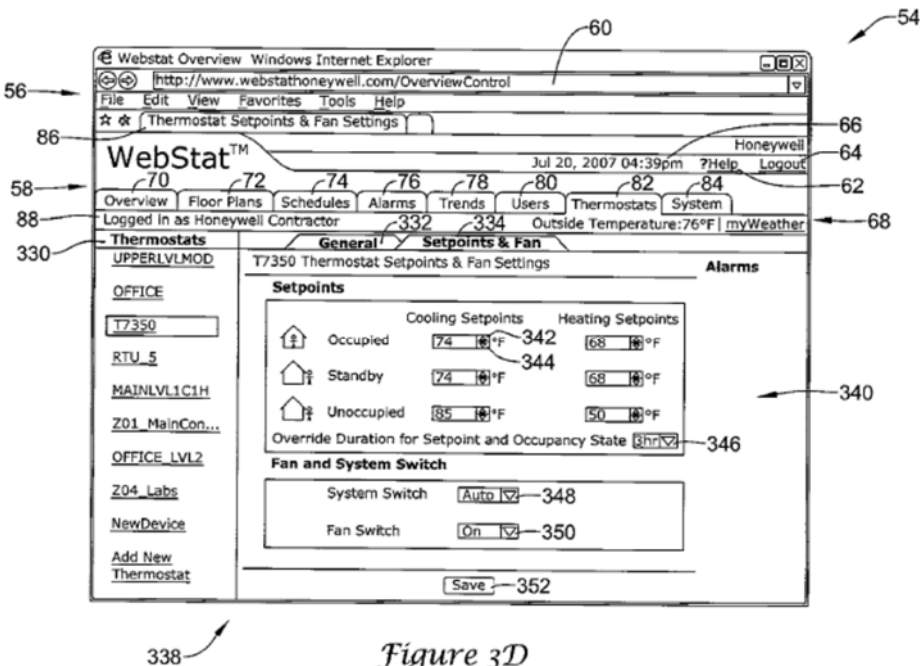


Figure 3D

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